

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

All Cases

MDL No. 2804
Case No. 17-md-2804
Hon. Dan Aaron Polster

CERTAIN NON-RICO SMALL DISTRIBUTORS' JOINDER IN NOTICE OF POSITION

Non-RICO Small Distributor Defendants H. D. Smith, LLC and Prescription Supply Inc. (together, “Non-RICO Small Distributors”) submit this notice of their joinder in the Certain Defendants' Notice of Position Regarding In Limine Evidentiary Rulings and Orders of December 26, 2019 and January 3, 2020 filed on January 31, 2020 (ECF No. 3133). The Non-RICO Small Distributors reserve all objections and rights identified by the other defendants. In addition to the deficiencies noted by the other defendants, the Non-RICO Small Distributors had been severed from the Track One cases at the time the motions *in limine* were briefed and decided, and Non-RICO Small Distributors cannot be bound by orders on which they had no opportunity to be heard.¹

¹ Nor have Non-RICO Small Distributors had the opportunity to seek further consideration or reexamination of the Court's interlocutory evidentiary rulings in the context of trial and the actual presentation of evidence. *See In re Air Crash Disaster*, 86 F.3d 498, 518 (6th Cir. 1996) (“It is well established that the interlocutory orders and rulings made pretrial by a district judge are subject to modification by the district judge at any time prior to final judgment[.]” (quoting *In re “Agent Orange” Prod. Liability Litig.*, 733 F.2d 10, 13 (2d Cir. 1984))).

Dated: February 3, 2020

Respectfully submitted,

/s/ William E. Padgett

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CERTIFICATE OF SERVICE

I, John J. Haggerty, certify that the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ John J. Haggerty
John J. Haggerty